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Delta Country

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92-157

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 7, 1994

The Honorable Trent Lott
487 Russell Senate Office Building
Washington, DC 20510-2403

Dear Senator Lott:

I'm writing concerning an ongoing problem with the Allocations Branch of The Federal Communications Commission.

Senator, I am thorough convinced that the FCC, particularly the Allocations Branch, is callously indifferent to the commercial impact of an upgrade of a small radio station. When I bought this station, it had been off-the-air for years, unable to generate sufficient revenue to survive. Although we resurrected the station and have struggled to survive, we cannot continue to do so without a power upgrade. As you are aware, Bolivar County is one of the largest counties in the state, and we simply cannot cover our market area with only 3,000 watts.

The legal bills I have incurred in attempting to secure an upgrade have so far amounted to thousands of dollars, and there is still no resolution in sight. You visited our station during the ice storm and are aware that we are a small operation. Although we strive to run a professional operation and to serve the public as best as possible, we don't have unlimited funds with which to wage battle with incompetent bureaucrats who cannot understand how their inaction adversely affects the livelihood of a small-market radio station.

If the FCC's "foot dragging" continues, it will literally put us out of business. Then, when the next natural disaster strikes our area, we won't be here to help.

The background of the case is as follows: In June 6, 1990, a Petition for Rule Making was filed seeking to upgrade our station from a Class A facility (3,000 watts) to a Class C2 facility (50,000 watts). To accommodate the upgrade, the petition also requested a substitution of a vacant channel at Belzoni, Mississippi, for which one application was then pending.

On July 24, 1990, ignoring our petition which had been filed six weeks earlier, the FCC granted the Belzoni application. Normal FCC procedure is to hold such grants in abeyance until action has been taken on a petition such as ours. On July 31, 1990, I notified the FCC that they had overlooked our petition when granting the Belzoni application. After hearing nothing, I followed up on September 7, 1990, and was told that the situation was being looked into. I heard nothing further until receiving a letter dated October 18, 1990, in which I was told that our petition was being

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On November 19, 1990, we filed, through our attorney, Barbara L. Waite of Venable Baetjer, Howard and Civiletti, a Petition for Reconsideration of the FCC's dismissal of our petition. That petition sat dormant for over 20 months until July 28, 1992, when the FCC released a Notice of Proposed Rule Making which dismissed our Petition for Reconsideration and basically started the entire process over again.

At that point, we filed a continuing expression of interest in the higher-class channel. However, due to changes in FM allocations since the original petition was filed in 1990, an opportunity arose for our chief competitor to file a petition for a new channel in Durant, Mississippi, effectively blocking our upgrade.

On March 1, 1993, we submitted "Reply Comments" in the proceeding, in which we identified alternate channels which could be allocated to Durant. Normal FCC policy in such a situation is to grant the upgrade as originally requested and then allocate one of the alternate channels at Durant. However, this has not been done.

When I called the Allocations Branch of the FCC in July 1993, I was told that a Report and Order would be adopted "within 30 days". When the Report and Order did not come as promised, I called Ms. Vickie McCauley of the Allocations Branch as was told that it would be released "in several weeks". Since that time I have spoken with Arthur Scrutchins, Sharon McDonald, Kathy Shurle and John Karousos of the Allocations Branch, all of whom have had some involvement in the case. All have promised to look into the matter and give me a answer, but as of this date, I am still waiting.

At one point, our attorney, Barbara L. Waite, was told that the process could not be speeded up because the cases could not be processed out of order. Yet my competitor, who didn't even file a Petition for Rule Making until early '93 has already had their upgrade processed and granted.

Ms. Waite wrote to Mr. Douglas Webbink, Chief of the Policy and Rules Division of the FCC (a copy of which is attached) on February 23, 1994, in an attempt to find out why no action has been taken on our upgrade, yet her letter has also been ignored.

Since February 1994, I have been unable to get anyone from the Allocations Branch to return my calls, even though I have left messages on many occasions. I was able to get in touch with Vickie McCauley today who informed me that the petition was "still pending". When I reminded her that I had been told as far back as July of 1993 that a Report and Order would be adopted within 30 days, she reiterated that it was still pending. She also told me that the FCC's freeze on new station application, instituted within the last 60 days, prevents them from taking any action on our upgrade. When I asked for more specifics, she became rather curt and told me she could not discuss the case any further.

As you are aware, our radio station provides a vital public service to our listening audience. During the February ice storm, we were the only radio station in the area that remained on the air, providing the only link to the outside world for thousands of Delta residents. Had we had our power increase, we could have reached a much larger area of the Delta.

I would appreciate it if you could look into the situation for me.

Sincerely,

DELTA RADIO, INC.



Larry G. Fuss
President & General Manager

cc: Ms. Barbara L. Waite - Venable, Baetjer, Howard & Civiletti
Mr. Reed E. Hundt - Chairman, Federal Communications Commission
Mr. James H. Quello - Commissioner, Federal Communications Commission
Mr. Andrew C. Barrett - Commissioner, Federal Communications Commission
Mr. Karl Kensinger - Special Assisant to Chief, Mass Media Bureau
~~Mr. Douglas W. Webbink - Chief, Policy and Rules Division~~
Ms. Vickie McCauley - Acting Chief, Allocations Branch
Broadcasting & Cable
Radio World
Radio & Records
Electronic Media
The M Street Journal

FEB 23 1994

VENABLE, BAETJER, HOWARD & CIVILETTI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD
MCLEAN, VA
ROCKVILLE, MD
TOWSON, MD
BEL AIR, MD

SUITE 1000
1201 NEW YORK AVENUE, N. W.
WASHINGTON, D.C. 20005-3917

(202) 962-4800
FAX (202) 962-8300
TELEX 898032

RICHARD M. VENABLE (1939-1910)
EDWIN G. BAETJER (1968-1945)
CHARLES MCH. HOWARD (1970-1942)

WRITER'S DIRECT NUMBER IS
(202) 962-4811

February 23, 1994

BY HAND DELIVERY

Mr. Douglas W. Webbink, Chief
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street N.W., Room 8010
Washington, D.C. 20554

RE: Petition for Rulemaking (Table of Allotments, Cleveland and Belzoni, Mississippi), MM Docket No. 92-157

Dear Mr. Webbink:

I am writing you because my client, Larry G. Fuss of Delta Radio, Inc., and I have been unable to obtain any answers to our questions regarding the abovementioned rulemaking and why an order has not issued. The NPRM issued July 28, 1992, pursuant to a petition filed in 1990. (A copy of the NPRM is enclosed.) Although there was an additional expression of interest, this interest could be accommodated by another channel. Consequently, there appears to be no reason why this upgrade cannot be allotted.

My client was told as long ago as July, 1993, that the order had been drafted and merely needed supervisory review; thus, the order should be out in "about 30 days". He was told the same thing every month thereafter until December, when the order had still not issued.

On December 13, 1993, however, an order issued pursuant to an NPRM released less than a year earlier - to my client's competitor in Cleveland, Mississippi, no less (a copy of which is enclosed) - while my client's rulemaking had languished for eighteen months. At that point, I talked with Ms. McKittrick to try to find out what was going on, why these rulemakings were apparently being addressed out of the order in which the petitions had been filed. (We realize that there have been personnel difficulties in the Allocations Branch, but that should not affect the order in which rulemakings are

Mr. Douglas W. Webbink, Chief
February 23, 1994
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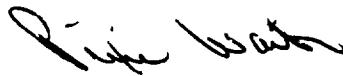
addressed.) All she could tell me was that an order should issue in our rulemaking "very quickly".

Two more months have passed and no order has issued. My client is now convinced that the Commission is callously indifferent to the commercial impact of an upgrade upon small stations. To make matters worse, the petition was originally filed in 1990 and erroneously rejected by the Commission with the result that the NPRM itself was delayed for two years. This upgrade effort has now taken almost four years.

It has also now taken on a sense of greater urgency. WDTL(FM)'s tower recently suffered structural damage during the most severe ice storm in state history (see enclosed). Because the upgrade will require a new tower and site, my client is reluctant to invest in substantial repairs to a tower which will be abandoned in due course.

Could you please have someone look into this and give us some real answers?
We appreciate any assistance you can render.

Very Truly Yours,



Barbara L. (Pixie) Waite

BLW/apf

Enclosures (3)

cc: Mr. Larry G. Fuss

The Honorable Trent Lott, 487 Russell Senate Office Bldg., Washington, DC 20510

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-157

In the Matter of

Amendment of Section 73.202(b). RM-7462
Table of Allotments.
FM Broadcast Stations.
(Cleveland and Belzoni,
Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 13, 1992;

Released: July 28, 1992

Comment Date: September 18, 1992

Reply Comment Date: October 5, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Larry G. Fuss, d/b/a Contemporary Communications ("petitioner"), former licensee of WQAZ(FM) (now WDTL-FM), Cleveland, Mississippi, and successor in interest to Robert G. Johnston, Trustee, requesting the substitution of FM Channel 225C2 for Channel 224A at Cleveland and the modification of the license of Station WQAZ(FM) to specify operation on the higher class channel.¹ To accommodate the Cleveland channel substitution, petitioner proposes the substitution of Channel 292A for Channel 225A at Belzoni, Mississippi, and the modification of the construction permit of Larry R. Scott ("Scott"), permittee for WJSJ(FM), Channel 225A, Belzoni, accordingly. Petitioner states his intention to apply for the channel, if allotted.²

2. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter, petitioner provided a copy of an agreement with Scott consenting to a change in its authorized transmitter site, as well as its proposed channel of operation, to accommodate the modification for Station WQAZ(FM).

3. We believe the public would be served by proposing the substitution of Channel 225C2 for Channel 224A at Cleveland, Mississippi since it would provide the community with a wide coverage area FM service. Channel 225C2 can be allotted to Cleveland in compliance with the Commission's minimum distance separation requirements at

the petitioner's current site.³ Channel 292A can be substituted for Channel 225A at Belzoni, Mississippi in compliance with the minimum distance separation requirements with a site restriction 8.4 kilometers (5.2 miles) southeast.⁴ As requested, we also propose to modify petitioner's license for Station WDTL-FM to specify operation on Channel 225C2 at Cleveland. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 225C2 at Cleveland or require petitioner to demonstrate the availability of an additional equivalent class channel. In addition, we shall propose to modify the construction permit for Channel 225A, Belzoni, Mississippi (FCC File No. BPH-870327KD) issued to Larry R. Scott to accommodate the Cleveland, Mississippi proposal.

4. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party to reimburse the affected station for costs incurred therewith. In this instance, petitioner stated its willingness to prepare the engineering exhibit for the minor change application made necessary by the channel modification to specify the new site at no charge to Scott.

5. Although an *Order to Show Cause* to Scott for the proposed station on Channel 225A, Belzoni, Mississippi, is not required in view of its consent to Scott's modification request, we will serve Scott with a copy of this *Notice*.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

| City | Channel No. | |
|------------------------|------------------|-------------------|
| | Present | Proposed |
| Cleveland, Mississippi | 224A, 280A, 295A | 225C2, 280A, 295A |
| Belzoni, Mississippi | 225A, 296A | 292A, 296A |

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following: Larry R. Scott, 1605 Carlisle Drive, E., Mobile, AL 36618, and Delta Radio, Inc. P.O. Box 159, Fayetteville, GA 30214.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before September 18, 1992 and reply comments on or before October 5, 1992 and are advised to read the Appendix for

¹ An assignment of license for Station WQAZ(FM) to Delta Radio, Inc. was consummated on March 18, 1992 (BALH-9020212HC). We will serve Delta Radio with a copy of this *Notice*.

² The instant petition was initially rejected as defective based upon a grant of Scott's application for construction permit on Channel 225A at Belzoni, Mississippi. See *Letter* to Larry G. Fuss from Assistant Chief, Policy and Rules Division, October

18, 1990. Petitioner filed a petition for reconsideration of that action. We will treat petitioner's petition for reconsideration as a petition for rule making.

³ The coordinates for Channel 225C2 at Cleveland are North Latitude 33-45-12 and West Longitude 90-42-45.

⁴ The coordinates for 292A at Belzoni are North Latitude 33-08-46 and West Longitude 90-24-58.

the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner and its counsel as follows:

Barbara L. Waite, Esq.
Venable, Baetjer, Howard & Civiletti
1201 New York Ave., N.W., Suite 1000
Washington, D.C. 20005

Delta Radio, Inc.
P.O. Box 159
Fayetteville, GA 30214.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-100

In the Matter of

Amendment of Section 73.202(b). RM-8175
Table of Allotments.
FM Broadcast Stations.
(Cleveland and Ebenezer,
Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 10, 1993; Released: December 13, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 2739 (1993), proposing the substitution of Channel 280C3 for Channel 280A at Cleveland, Mississippi, and deletion of Channel 280A at Ebenezer, Mississippi. The *Notice* was issued in response to a petition filed jointly by Radio Cleveland, Inc. ("Radio Cleveland") and James L. Haffey d/b/a JimBar Enterprises ("JimBar"). Radio Cleveland filed comments. Afro-American Broadcasters of Mississippi ("Afro-American Broadcasters") filed comments and an expression of interest for the channel at Ebenezer. Radio Cleveland filed reply comments.

2. As stated in the *Notice*, Channel 280C3 can be allotted to Cleveland provided Channel 280A at Ebenezer is deleted.¹ The *Notice* pointed out, JimBar, permittee of Channel 280A at Ebenezer, requested cancellation of its construction permit for Channel 280A and deletion of the channel. Additionally, the *Notice* stated that in support of this request, JimBar had stated that it determined that Ebenezer, an unincorporated community with a 1984 estimated population of 150, could not feasibly support an FM station in light of current economic conditions.² The *Notice* stated that Channel 280A at Ebenezer would be deleted unless comments were filed during the comment cycle in this proceeding stating an intention to file an application for the channel. The *Notice* also stated that should an expression of interest be filed for Channel 280A

at Ebenezer, upon termination of this proceeding, a filing window would be opened. Further, should the channel be retained, caution was expressed in the *Notice* that should it appear that there is undue delay in activating the channel in Ebenezer, the Commission would consider a further petition to remove the channel at Ebenezer to accommodate expanded service at Cleveland.

3. Afro-American Broadcasters filed comments requesting retention of Channel 280A in Ebenezer stating its intention to file an application for the channel. Afro-American Broadcasters states that Ebenezer is located just off Interstate Highway 55, a major north-south traffic route. Afro-American Broadcasters does acknowledge that Ebenezer is a small community but contends that a radio station operating in Ebenezer could also serve the nearby communities of Goodman, Durant and Vaughn, Mississippi.³

4. Radio Cleveland, in its reply comments, continues to support the proposed upgrade at Cleveland. Radio Cleveland argues that Ebenezer no longer qualifies as a community for allotment purposes and Channel 280A at Ebenezer should be deleted. Radio Cleveland reiterates that JimBar, the original petitioner for the channel at Ebenezer, requested cancellation of its construction permit after it determined that Ebenezer could not support an FM radio station. According to Radio Cleveland, Ebenezer is essentially becoming a "ghost town" with a population of 100 people as shown in the 1992 *Rand McNally Commercial Atlas* which is a decrease from the population of 150 people as was listed in the 1987 *Atlas*. Radio Cleveland points out that Ebenezer is not listed in the U.S. Census and that it is neither incorporated nor a Census Designated Place. Further, Ebenezer has no local government, school system or local newspaper, all things which would support its status as a community. Ebenezer only has a handful of local business and churches, which, states Radio Cleveland, may in fact serve the wider surrounding rural area. Radio Cleveland does not dispute that Ebenezer does have some of the attributes of a community such as a post office, its own zip code, volunteer fire department and water association but argues that it is not uncommon for sparsely populated rural areas to have such organizations. Radio Cleveland contends that the choice between retention of a channel in Ebenezer or the significant improvement of service at the much larger community of Cleveland compels the deletion of the Ebenezer allotment. Radio Cleveland asserts that Station WCLD-FM, Cleveland, presently serves 40,482 people while the requested upgrade would provide service to 76,687 people, virtually doubling the number of people served. The Ebenezer Class A station, on the other hand, would provide new service to 25,128 people. Radio Cleveland points out that Channel 280A at Ebenezer is short spaced to Station WCLD-FM, Cleveland, as a six kilowatt facility. Thus, the Ebenezer channel would be limited to an effective radiated power of three kilowatts.

¹ On January 7, 1993, JimBar Enterprises filed a letter with the Commission requesting cancellation of the construction permit for Station WZBR-FM, Ebenezer, Mississippi (BPH-900424ME, BMPH-9201161O). The Commission granted JimBar's request on March 23, 1993.

² Channel 280A was allotted to Ebenezer in MM Docket No. 89-324. See 5 FCC Rcd 682 (1990). The *Notice* in that proceeding requested JimBar Enterprises ("petitioner"), to provide information to support a finding that Ebenezer qualifies as a community for allotment purposes. Although petitioner provided minimal information, Ebenezer was found to be an iden-

tifiable population grouping with businesses and community organizations, including a post office and zip code, which identified with the community.

³ Goodman (population 1,256 people) and Durant (population 2,838) have a post office, zip code, bank and both communities are incorporated. The populations are taken from the 1990 U.S. Census. We note that there is a proposal in MM Docket No. 92-157 to allot Channel 266A to Durant, Mississippi. Although Vaughn is shown on a map of Mississippi in the 1993 *Rand McNally Commercial Road Atlas*, it is not listed in the 1990 U.S. Census.

²According to Radio Cleveland, granting the WCLD-FM upgrade and deleting the vacant Ebenezer channel would be fully consistent with recent pronouncements by the Commission regarding the need to take into account the economic plight of smaller market radio stations such as WCLD-FM. Further, maintaining the vacant Ebenezer channel would simply weaken the financial viability of other stations in its area, as well as Station WCLD-FM. Radio Cleveland states that its proposal to upgrade Station WCLD-FM will strengthen an existing broadcast service that is currently serving its area well and at the same time eliminate a channel that probably will never be financially viable.

5. Radio Cleveland also argues that the expression of interest of Afro-American Broadcasters should not be credited as there is no indication as to whether this is an individual or a corporation and if it is qualified to file an application for the vacant Ebenezer channel. Radio Cleveland further argues that without identification or additional information, there is no way to determine if the expression of interest is sincere or simply intended to block improved service by Station WCLD-FM.

6. We find that Ebenezer no longer qualifies as a "community" for allotment purposes. Although an interest was expressed in retaining the channel, no contrary evidence was presented to establish that Ebenezer is a community for allotment purposes. Therefore, we will not retain the channel based on our determination that Ebenezer no longer qualifies as a community. Afro-American Broadcasters' response to the Notice consisted of a simple expression of interest in the channel which indicated that it would file an application for the channel.⁴ Afro-American Broadcasters did not address the discussion in the Notice concerning JimBar's reasons for deletion of the channel at Ebenezer, although given an opportunity to do so in its comments, and therefore neglected to provide any showing that supports retention of the channel.⁵ Therefore, we will delete Channel 280A at Ebenezer. See *Penacook, New Hampshire*, 2 FCC Rcd 459 (1987); *Flora and Kings, Mississippi and Newellton, Louisiana*, 7 FCC Rcd 5477 (1992); *Searles Valley, California*, 3 FCC Rcd 5221 (1988) and *Garden City, Indiana*, 6 FCC Rcd 3747 (1991). Pursuant to Section 307(b) of the Communications Act, FM channels are allocated to specific communities. In the Declaratory Ruling Concerning the Meaning and Effect of Section 73.642(a)(3), 55 FCC 2d 187, 189 (1975), the Commission held that: "Although broadly speaking, a community consists of an identifiable population grouping with common local interests, there is no hard and fast rule to apply in deciding whether a particular population grouping constitutes a community and all relevant facts in each case must be weighed. Incorporation is not a prerequisite, and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village or other political subdivision." citing *Mercer Broadcasting Co.*, 22 FCC 1009 (1957); *Musical Heights, Inc.*, 37 FCC Rcd 82 (1964);

Holston Broadcasting Corp., 1 R.R. 2d 982 (1964); and *Hymen Luke*, 46 FCC 2d 560 (1974). Ebenezer is not incorporated or listed in the 1990 U.S. Census. The 1993 *Rand McNally Commercial Atlas* estimates Ebenezer's population at 100. However, mere geographical location is not sufficient to establish "community" status. See *Vimville, Mississippi*, 48 FR 5974 (1983). We note that Ebenezer has a post office and a zip code. However, the presence of a post office and a zip code is not sufficient to establish community status. See *Coker, Alabama*, 43 RR 2d 190 (1978). In this case, Ebenezer has several of the attributes normally associated with a community and on that basis was allotted an FM channel. However, the only permittee for the channel has since requested dismissal of the construction permit and deletion of the channel after determining the community could not support an FM station in light of current economic conditions and Ebenezer's declining population.

7. In response to Radio Cleveland's concerns over economic plight of smaller market radio stations, we note that the Commission recognizes the increased competition and economic hardships among stations in radio markets. However, in light of the outcome herein, there is no need to address this issue. See *FM Channel Assignments: Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), aff'd 4 FCC Rcd 2276 (1989). With respect to Radio Cleveland's allegation that the expression of interest filed by Afro-American Broadcasters could have been filed merely to block the requested upgrade by Station WCLD-FM, Radio Cleveland failed to provide proof of this allegation. Furthermore, Radio Cleveland also failed to show that the inability to identify Afro-American Broadcasters as an individual or corporation would establish a lack of good faith on the part of Afro-American Broadcasters. Accordingly, and in light of the outcome herein, we see no reason to address this issue further at this time.

8. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of Channel 280C3 for Channel 280A at Cleveland, Mississippi, and deletion of vacant Channel 280A at Ebenezer, Mississippi. In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license for Station WCLD-FM, Channel 280A, Cleveland, Mississippi, to specify operation on Channel 280C3.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 27, 1994, the FM Table of Allotments, Section 73.202(h) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

⁴ Afro-American Broadcasters indicates that the communities of Goodman, Durant and Vaughn, Mississippi, would also be served by an allotment at Ebenezer. We note, however, that a licensee's primary obligation is to serve the needs and interests of the community to which it is licensed. See *Ludlow, California*, 4 FCC Rcd 6883 (1988) and Section 73.1120 of the Commission's Rules.

⁵ It is always in the commenters' best interest to present the

Commission with supporting evidence during the rule making process, especially in cases where, as here, the area in question is neither incorporated nor recognized by the U.S. Census. Timely disclosure ensures that all information will be considered in the deliberations before an allotment is made or deleted.

⁶ The coordinates for Channel 280C3 at Cleveland are 33-43-59 and 90-41-38.